

CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF THE MEETING, Public Session
Friday, October 8, 1999

Call to order: Chairman Karen Getman called the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 8:07 a.m. at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Getman, Commissioners William Deaver, and Kathleen Makel were present.

The Commission meeting adjourned for closed session at 8:07 a.m. Commissioner Scott arrived at the closed session meeting at 8:15 a.m.

The Commission returned from closed session and reconvened the meeting to the public at 9:50 a.m.

Item #1. Approval of the Minutes of the September 10, 1999, Commission Meeting.

The minutes of the September 10, 1999, Commission meeting were distributed to the Commission and made available to the public. Commissioner Deaver made a motion to accept the minutes as presented. Commissioner Makel seconded the motion and it carried unanimously.

Item #2. Public Comment.

There was no public comment.

Item #3. In the Matter of Ron Haro, FPPC No. 99/2767.

Enforcement Division Chief Cy Rickards presented this SEI expedited procedure matter, and noted that it was within the ranges approved by the Commission for expedited matters.

Chairman Getman made a motion to accept the stipulation with a recommended fine of three hundred dollars. Commissioner Deaver seconded the motion. There being no opposition, the motion carried.

Item #4. In the Matter of Eleanor Sanchez Gatica and the Committee To Elect Eleanor Gatica, FPPC No. 99/86.

Enforcement Counsel Deborah Bain presented this one count stipulation with a recommended fine of five hundred dollars. Ms. Bain explained that respondent Eleanor Sanchez Gatica was an

unsuccessful candidate for the Maywood City Council in the March 4, 1997, general election who failed to timely file a semi-annual campaign statement for the period ending June 30, 1997, in violation of Government Code section 84200.

Ms. Bain noted that the failure to file did not appear to be an intentional effort to neglect her responsibilities to file, and Ms. Gatica had no prior enforcement history. Ms. Bain pointed out that Ms. Gatica had made her records available to FPPC staff and that staff had looked over those records, and had determined not to require Ms. Gatica to comply with the filing requirements.

Commissioner Scott noted her concern that it should be the policy of the Commission to require that respondents file statements. Chairman Getman responded that it is the policy of the FPPC that statements be filed as part of the stipulation, and that this case was treated differently only because it was an extraordinary case.

Chairman Getman made a motion to approve the stipulation. The motion was seconded by Commissioner Makel. There being no opposition, the motion carried.

Item #5: In the Matter of Lorraine Cervantes and the Committee to Elect Lorraine Cervantes, FPPC No. 95/286.

Enforcement Counsel Deborah Bain presented this three count violation with a recommended fine of Two Thousand Five Hundred Dollars (\$2,500). Ms. Bain reported that Lorraine Cervantes was an unsuccessful candidate for the Compton City Council in the April 18, 1995, primary election. With regard to this election, Respondent Cervantes and her committee failed to file two pre-election campaign statements, a violation of Government Code sections 84200.5 and 84200.8, and a semi-annual campaign statement, in violation of Government Code section 84200 (three counts total).

Ms. Bain explained that the respondent was having financial difficulties, was relatively new to the political process and did not understand the cash contribution definitions.

Commissioner Scott stated that the fine seemed excessive and noted that the \$1,000 received by the respondent from her son may not necessarily be considered a contribution. Enforcement Chief Cy Rickards responded that it was clear to staff that the \$1,000 was a contribution. Ms. Bain noted that the respondent was not charged with the cash contribution because the evidence was not strong enough to prove the charge, but that it was considered in the stipulation as a factor.

Commissioner Makel suggested that there should have been a cash contribution charge, but no fine imposed because it could not be proven. Mr. Rickards disagreed, noting that there should not be a charge if there is not enough proof, and that judgment should be made by the attorney and investigator handling the case. Commissioner Makel concurred, but added that it should not

be characterized as a cash contribution in the stipulation if it could not be proven.

Chairman Getman made a motion that the stipulation be accepted. Commissioner Deaver seconded the motion. Commissioner Scott voted nay. Commissioners Makel, Deaver, and Chairman Getman voted aye. The motion passed.

Item #6: In the Matter of Yes on C in El Segundo and Carl Jacobson, FPPC No. 97/312.

Staff Counsel Steven Russo, on behalf of Senior Commission Counsel Deanne Canar, presented this four count stipulation with a recommended fine of Six Thousand Dollars (\$6,000). Yes on C in El Segundo, a ballot measure committee primarily formed to support a local bond measure, and the committee treasurer Carl Jacobson, violated Government Code section 84200.8, subdivisions (a) and (b) by failing to timely file pre-election campaign statements, and Government Code section 84203, by failing to file late contribution reports (three counts).

Mr. Russo explained that the possible \$8,000 fine was not charged because there was no history of previous Political Reform Act violations, the violations appear to be the product of negligence rather than a deliberate intent to hide information from the public, and because the committee cooperated with the investigation and admitted their wrongdoing when contacted. The committee demonstrated a willingness to comply with the Political Reform Act in the future and displayed its commitment in the subsequent November election by complying with all reporting requirements.

Commissioner Scott questioned whether compliance with the reporting requirements in the subsequent November election should be considered a mitigating factor in their non-compliance with the reporting obligations for the earlier June election. Mr. Russo responded that the person who is charged and continues to fail to meet the reporting requirements should be treated more harshly than the person who admits their wrongdoing and complies with the law in the future.

Commissioner Scott noted that it is more important to get people to follow the law in the first place than to prosecute them later for failing to comply with their filing obligations.

Chairman Getman made a motion that the stipulation be accepted. The motion was seconded by Commissioner Deaver. There being no objection, the motion carried.

Item #7: In the Matter of Burbank-Glendale-Pasadena Airport Authority, FPPC No. 97/202.

Enforcement Counsel Amy Holloway presented this two count stipulation for the failure to file an independent expenditure report and a late independent expenditure report, with a recommended fine of Three Thousand Dollars (\$3,000). The Airport Authority sent out a mailer which expressly advocated the defeat of a ballot measure, and thereby qualified as an independent expenditure committee with filing obligations.

Commissioners Deaver and Scott asked for clarification as to why the prohibition against sending mass mailers at public expense did not apply. Ms. Holloway explained that the mass mailing prohibition applies to mass mailings sent at public expense which feature an elected official. The mailer sent by the Airport Authority did not feature an elected official, but rather advocated a vote on a ballot measure.

Chairman Getman made a motion to accept the stipulation. Commissioner Deaver seconded the motion.

Commissioner Scott requested that staff refer the case to the Attorney General's office for possible prosecution of misuse of public funds.

Commissioner Scott voted nay. Commissioners Makel, Deaver and Chairman Getman voted aye. The motion passed.

Items #10 and #11:

In the Matter of William Paparian, FPPC No. 96/472.

In the Matter of BGP Airport Associates, FPPC No. 96/472.

Staff Counsel Steven Russo, on behalf of Senior Commission Counsel Deanne Canar, presented these two related cases. William Paparian accepted contributions of more than \$250.00 from BGP Airport Associates (BGP), while BGP was a party to a pending proceeding before the Burbank-Glendale-Pasadena Airport Authority (the "Authority") of which Mr. Paparian served as a commissioner. Mr. Paparian committed three violations of the Political Reform Act by accepting the contributions and not disqualifying himself from participating in the proceedings. BGP committed three violations of the Act by making the contributions and not disclosing the contributions on the record of the proceedings.

Commissioner Scott stated that the fines should be charged according to the number of times Mr. Paparian voted on an issue involving BGP. Mr. Russo responded that even though the awarding of the contract to BGP involved three votes, staff determined that it was one decision. Commissioner Scott noted that, in this instance, as a policy issue, the charging should be handled differently, ie., charging according to the number of times he voted.

Mr. Russo explained that BGP was being fined \$6,000, the maximum amount allowed for three counts, while Mr. Paparian was only fined \$4,500, because of a difference in aggravating and mitigating factors. BGP received a multi-million dollar contract as a result of the decisions of the Authority. Additionally, BGP had the resources to find out what their legal requirements were and to comply with those requirements. Mr. Paparian relied upon incorrect legal advice provided by the Authority regarding the lawfulness of his participation in one of the decisions.

Commissioners Scott and Makel agreed that the fact that Mr. Paparian seconded a motion in one

of the proceedings, then left the room and did not vote on the motion should not be considered a mitigating factor, because his conduct still constituted participation in the decision. Commissioner Scott questioned whether incorrect legal advice should be considered a mitigating factor. Mr. Russo explained that there was no evidence that the incorrect legal advice provided to Mr. Paparian was given in anything less than good faith.

Commissioner Makel stated that the fine for Mr. Paparian should be higher.

Commissioner Deaver noted that these two cases created the appearance of business people buying votes.

Chip Nielsen, with the law firm of Nielsen, Merksamer, representing Mr. Paparian noted that the contributions were made by two individuals from two large corporate families, and were not directly made by BGP. He added that, from Mr. Paparian's standpoint, the contribution was not made until after the vote.

Mr. Nielsen presented a copy of a June 7, 1995, Opinion by the FPPC, where in a similar case it was advised that disqualification of a public official would not be necessary. He added that in the 25 of the PRA, there have been no judicial interpretations of the PRA regarding the violations alleged in this case, and that such judicial interpretations would have been helpful. Mr. Nielsen argued that even though Mr. Paparian agreed to the stipulation, he was not convinced of his guilt in this case.

Chairman Getman made a motion to accept the stipulations in items #10 and #11 as written. The motion was seconded by Commissioner Deaver.

Commissioner Makel noted that, in the interest of getting the matter resolved, while she will agree to this stipulation, she preferred that the fine be higher with no mitigation allocated to the fact that Mr. Paparian just seconded a motion.

Commissioners Scott and Deaver agreed that more information should have been made available.

Commissioner Scott voted nay. , and Commissioners Makel, Deaver and Chairman Getman voted aye. The motion passed.

Chairman Getman adjourned the meeting for a break at 11:15 a.m.
The Commission meeting reconvened at 11:30 a.m.

Resolution to honor Steven G. Churchwell.

Chairman Getman presented a resolution to honor FPPC General Counsel Steven Churchwell. She reported that he would be leaving his position as General Counsel of the FPPC and returning to private practice. She read the resolution and presented it to him.

Mr. Churchwell thanked the Commission.

Commissioners Makel and Scott thanked Mr. Churchwell and complimented his work and his attitude at the FPPC.

Item #8: In the Matter of Taxpayers For Better Education PAC, and F. Laurence Scott, Jr., FPPC No. 99/92.

Enforcement Counsel Amy Bisson Holloway presented this two count stipulation with a recommended fine of Two Thousand Dollars (\$2,000). She reported that the respondent, Taxpayers for Better Education PAC, is a general purpose committee. Respondent F. Laurence Scott, Jr. is the committee's treasurer. Respondents failed to file late contribution reports disclosing late contributions made during the 1996 primary and general election, in violation of Government Code section 84104 (two counts total).

Ms. Holloway noted that the majority of the contributions were disclosed to the public prior to the election through the recipient's late contribution reports.

Chairman Getman made a motion that the stipulation be accepted as written. Commissioner Makel seconded the motion. There being no objection, the motion passed.

Item #9: In the Matter of Laurence Steffan and Committee to Elect Laurence H. Steffan El Dorado County Superior Court Judge Department 2, FPPC No. 98/330.

Enforcement Counsel Amy Bisson Holloway presented this one count stipulation with a recommended fine of One Thousand Five Hundred Dollars (\$1,500). She explained that respondent Laurence Steffan was an unsuccessful candidate for El Dorado County Superior Court Judge Department 2, and that Mr. Steffan failed to maintain any of the required campaign records, in violation of Government Code section 84203 (one count).

Ms. Holloway noted that Mr. Steffan had thrown away all of his records after filing.

Chairman Getman made a motion that the stipulation be accepted. Commissioner Deaver seconded the motion. There being no objections, the motion passed.

Item #12: In the Matter of Joseph Melvin Gagliardi and J & J Sporting Goods, FPPC No. 98/83.

Senior Commission Counsel Mark Soble presented this fifty administrative count stipulation with a recommended fine of Ninety-six Thousand Dollars (\$96,000). He reported that respondent Joseph Melvin Gagliardi is the president and sole owner of J & J Sporting Goods, a

retail sporting goods store. Mr. Gagliardi also has investment interests in Gagliardi Insurance, Gagliardi Properties, Garden City Boxing, and Entertainment by J & J. He is also an officer of both California League, a professional baseball league, and Pony League, a youth baseball organization. In 1998, Mr. Gagliardi and J & J Sporting Goods laundered campaign contributions totaling \$24,000 to candidates for Mayor of the City of San Jose. The parties have stipulated and agreed that respondents violated the Political Reform Act in that they failed to tell recipients the true source of campaign contributions, and made campaign contributions without using a written instrument containing the name of the donor and the payee (48 counts), in violation of Government Code sections 84301 and 84300, subdivision (c); and failed to timely file major donor semiannual statements (2 counts), in violation of Government Code section 84200, subdivision (b).

Mr. Soble noted that this was one of a number of pro-active laundering investigations in the San Jose area developed by FPPC staff. The case moved extremely quickly, and the respondent acknowledged making the reimbursements and made his records readily accessible to enforcement staff.

Chairman Getman congratulated Mr. Soble on his handling of the case. She then made a motion that the stipulation be accepted. Commissioner Makel seconded the motion. There being no objection, the motion passed.

Item #13: Consideration of Adoption of a Policy Regarding Fines to Be Imposed When a Respondent's Conduct Violates More than One Provision of the Political Reform Act.

Enforcement Chief Cy Rickards noted that he had received a number of questions from the Commissioners regarding the information contained in the memo, which outlined the appropriate penalty and charging of conduct that violates more than one provision of the Political Reform Act, and that the information contained in the memo might not be enough to allow them to make a decision at this time.

Enforcement Counsel Amy Bisson Holloway explained that the issues involved are (1) whether the Commission can both charge and fine for separate violations and (2) whether there are separate violations that can be fined under certain instances.

Ms. Holloway pointed out that staff used the Penal Code Section 654 for guidance in addressing this issue. This provision states that there is one punishment for one criminal act. The definition of the criminal act varies, depending on the types of crime being looked at. The analysis of how to determine the different acts also varies, depending on the context of the cases. Ms. Holloway noted that indivisible acts versus divisible acts is an approach that the Commission should consider adopting. If the Commission agrees with that approach, staff could study the different violations of the Act, and determine how to distinguish acts within those contexts. She suggested that, in the more complicated cases, staff could set some guidelines and rules for how to determine which acts are separate.

Commissioner Scott requested that staff develop fact patterns and criteria for making decisions. She noted that the goal was to avoid being arbitrary.

Mr. Rickards noted that the differences between the two types of acts may not be easily definable.

Specific hypothetical examples were discussed. Mr. Rickards pointed out that while most of the Commission's cases are resolved through stipulation, those that do go to a hearing need to have all the possible legal alternatives available. Mr. Rickards clarified that the thrust of the memo was to allow staff the discretion to charge whatever violations they believe occurred, based on the evidence.

Chairman Getman stated that she supported the Enforcement Division's efforts to charge some cases as severely as possible, but noted that a legislative change to the statute could be a more appropriate means of accomplishing that goal. She added that there should probably be larger fines and a conspiracy statute for money laundering, and applauded the Enforcement Division's efforts to charge as much as possible in order to justify larger fines.

Mr. Rickards agreed, noting that a stipulation case involving money laundering motivated this discussion and memo. He added that in some situations involving plea bargains in the criminal context, the defendant will decide after the fact that the agreement should be appealed, based on the fact that the plea bargain violates section 654. In those cases, the courts routinely say that the defendant made a choice, with advice of counsel, after weighing the options, and that the courts would not hear an appeal of a plea bargain on Section 654 grounds.

Mr. Rickards suggested that, in order to make the memo useful, staff should take a look at different categories of offenses and develop criteria, or items to be looked at in those cases, to make determinations. That information should be outlined for the Commission as charging guidelines.

Chuck Bell, with the law firm of Bell, McAndrews and Hiltachk, speaking on his own behalf, largely agreed with the information in the Enforcement memo except for the issue of section 84300 and the approach which should be made in dealing with cases, including stipulations. He noted that each time a case involves an intermediary check payable to a campaign, there is potentially a violation of Section 84300 because it may not contain the name of the donor. Mr. Bell added that while it appeared that this interpretation would only be applied to money laundering cases, cases become precedent.

Ben Davidian, with the law firm of Wilke, Fleury, Hoffelt, Gould and Birney, explained that the history of Section 84300(c) and the 1996 amendment took away a tool which, in the past, allowed someone to illegally reimburse campaign contributions by using money orders. The amendment, he explained, was an attempt to assist the FPPC Enforcement Division as a discovery tool, and not intended to allow a second count to be charged.

Chairman Getman directed the staff to come back to the Commission with specific recommendations and specific types of cases, noting how this would be applied.

Commissioner Makel noted that there was consensus that the staff should have discretion in charging.

Mr. Rickards stated that they would look at different types of cases, specifically money laundering and conflicts, with regard to the issue of an arguably single transaction or course of conduct that can give rise to more than one violation, and how that situation would be approached.

Commissioner Scott requested that staff's review include reporting cases, and invited the general public to provide their input.

The Commission meeting adjourned for lunch at 12:30 p.m.

The Commission reconvened at 1:35 p.m.

Item #14: Prenotice Discussion Regarding Deadlines for Submitting Documents to the Commission.

Legal Division Counsel Deborah Allison and Senior Commission Counsel Lawrence Woodlock presented the Commission with possible amendments to Regulation 18310, and possible changes to its rule making process, as well as a proposal to change its meetings to every six weeks, instead of monthly.

Commissioner Deaver explained that the Commissioners are inundated with paperwork the two days before each meeting and that was why this item was being considered. He did not support the option of having the meetings every six weeks. He pointed out that anyone can speak at the meetings. Commissioner Deaver noted that in order for views to be considered, it is important to get written material to the Commissioners early.

Commissioner Scott agreed, strongly opposing any rule which would limit the time that the public would have to get material to the Commission. She noted that the earlier the documentation was given to the Commission, the better consideration it will receive.

Chairman Getman noted that it is deceptive to tell people that documentation can be received at any time prior to the meeting, when in actuality documents received very late sometimes do not get read. She added that sometimes documents are read by her, but not by the other Commissioners because they travel and are unable to get the documentation. She noted that the purpose of this agenda item was to increase public input, not to limit it. Chairman Getman stated that it is important that input be given to all members of the Commission, so that each of them has the same input for making the decision.

Commissioner Makel agreed, but noted that the "extraordinary circumstances" wording in the proposal may not be workable. She added that the information should be made available to all of

the Commissioners, with the understanding that if they get it in time they will read it, and if they do not get it in time, then it will not be read.

Legal Division Counsel Deborah Allison presented an option to restructure the Commission's rulemaking procedures. She noted that other agencies and commissions notice an item for adoption, hold a meeting and take public input at that meeting, then close the record. The governing body then goes back and evaluates the input. After they have reviewed all materials, they agendaize the item as a business discussion where they take formal action. No written or oral comments are taken during the business discussion. This could eliminate the need for a pre-notice discussion. This option was unanimously disapproved at an interested persons' meeting.

Chairman Getman noted that very often little attention is given to an item at the prenotice discussion and that the prenotice discussions may not be that useful. Ms. Allison responded that staff is divided on that question, and suggested that the Commission consider replacing prenotice discussions with working group discussions and interested persons meetings.

Acting Legal Division Chief Luisa Menchaca noted that staff is not suggesting deletion of the interested persons' process, but rather a modification with a working group process which will allow people to be more involved in the process.

Brian Maas, with the law firm of Pillsbury, Madison & Sutro, speaking on behalf of the California Political Attorney's Association stated that a formal regulatory procedure with a deadline was not necessary, and supported Option B. He agreed that everyone should get their documentation in to the Commission in a timely manner. Mr. Maas noted that prior to the prenotice hearings, agendaized items were sometimes held over for several meetings in order to iron out the details. The prenotice hearings helped to avoid those delays. He expressed his concern that by using the working groups option and only having one meeting before the Commission, those delays may occur again.

Ms. Menchaca noted that Phase II of the Conflicts Project will take about one and a half to two years to be accomplished under the prenotice system. In order to accomplish Phase II in one year, prenotice would need to be replaced by working groups. She added, however, that the calendar would provide for quarterly revisions and a prenotice meeting could be held at the Commission's discretion.

Chairman Getman noted that it would be important to complete Phase II within one year because three of the four current Commissioners' terms will expire and a great deal of momentum will be lost because the new Commissioners will not have their expertise.

Scott Hallabrin, representing the Assembly Ethics Committee, and appearing on behalf of the leadership of the Legislature in connection with the letter that was sent in by them, supported no regulation on this issue. He noted that it was not their intent to suggest that the Commission was trying to cut off the flow of information that it needs to make a decision. He agreed that the Commission should have all of the available information to make its decisions in a timely manner.

Tony Miller, attorney, noted that this has been a problem with the process since he was a Commissioner of the FPPC 25 years ago. He cited a time when a representative from the public presented a memo at the very last minute that made a difference in a Commission decision. He did not think a regulation was necessary.

Robert Leidigh, with the law firm of Olsen, Hagel, Leidigh, Waters & Fishburn, on behalf of the Senate Rules Committee, echoed the comments of the previous speakers. He felt that prenotice discussions should be retained whenever substantive changes were proposed. Mr. Leidigh pointed out that prenotice gives much broader notice to the public, and prenotice helps present a concrete proposal to the Commission at the adoption phase. He added that the prenotice discussion often brings forth alternative proposals and the Commissioners have more options to choose from in making its decision.

Commissioner Scott noted that sometimes people do not participate in the prenotice hearings because they plan to make their comments at the adoption hearing.

Mr. Leidigh responded that working groups have been very beneficial, and a less formal situation is sometimes helpful for discussions. He did not feel, however, that they should be a substitute when dealing with substantive changes in the law.

Ben Davidian, with the law firm of Wilke, Fleury, Hoffelt, Gould & Birney, noted that when he served as Chairman of the FPPC, the Commission had the same problem. He added that very often a last minute submission could make a difference, and that the Commission should not consider a deadline for the documents. Mr. Davidian agreed that the prenotice hearings are helpful, even though they were not always utilized by the public

Commissioner Makel commended the Chairman for pursuing this issue, in her efforts to help the Commissioners. She added that she did not think a rule was workable.

Item #15: Regulation Calendar for the Year 2000.

Legal Counsel John Vergelli presented a recommended rulemaking calendar for the Calendar Year 2000. He noted that the Commission intends to spend a major part of its rulemaking efforts on Phase II of the Conflicts Project. The calendar was developed with input from the Legal, Enforcement, and Technical Assistance Divisions of the agency.

He explained that the working group process is not intended to replace the interested persons meeting, but rather to be a more effective version of the interested persons' meeting. Mr. Vergelli noted that it is intended to get more substantive input from outside the agency earlier in the process. These meetings can be attended by anyone, and will be noticed exactly as the interested persons' meeting have been noticed.

The Chairman and Mr. Vergelli discussed the possible creation of supplemental planning documents which would augment the calendar by providing background and educational materials. Mr. Vergelli said he would work on developing such a document or documents for future Commission approval.

Chairman Getman stated that she would like to see an early policy discussion about regulatory strategies built into the calendar. She noted that there seems to be a basic choice between simple rules, which tend to be either over inclusive or under inclusive, or rules tailored to handle each situation more on its merits, which tend to be more complicated. She suggested that a discussion about the two directions should happen early in the process.

Commissioner Scott noted that the regulations need to be more understandable. Mr. Vergelli responded that Phase II will utilize a "plain English" approach, with the goal of making the regulations easier to read.

Mr. Vergelli stated that it is possible to accomplish the bulk of the overhaul of Phase II within one year with prenotice and notice discussion, if the Commission is willing to have more agenda items each month.

Chairman Getman responded that it is important to accomplish as much as possible within one year. Commissioners Makel and Deaver agreed. Commissioner Scott noted that it should be tailored, and provide options for the Commission so that quick decisions can be made.

Ms. Menchaca agreed that a major policy discussion should be made at the beginning of the process and suggested holding one at the end of the process, to ascertain if steps should be eliminated or added. Mr. Vergelli agreed.

Chairman Getman noted that the policy discussions should include input from the public.

The Commission directed the staff to develop a calendar for adoption which would accomplish as much as possible in one year, and would include the prenotice hearings.

Stan Weig, representing the California Association of Realtors, agreed with Commissioner Scott's concerns that the rules are too complicated, and strongly supported the Commission's goal of finding simplicity and a step-by-step process. He noted that there may be "non-starters" that cannot be done regulatorily but may invite legislative attention later on, and it would be helpful to know that early in the process.

Item #16: Adoption of Regulations or Possible Legislation.

Acting Legal Division Chief Luisa Menchaca presented an update of the March 1999 regulations presented to the Commission pertaining to implementation of SB 1753, added to the Political Reform Act (PRA) in 1998. The first regulation dealt with the scope of amendments to the definitions of elective offices, and the two other regulations dealt with campaign reporting requirements that candidates for the CalPERS Board would be subjected to under Section 84225

in the PRA. She reported that the staff held an interested persons' meeting in May, and discussed all of the issues related to the proposed amendments. Ms. Menchaca presented a memo that explained the legislative history and summarized the statutory construction issues deemed by staff to be relevant. The memo recommended adopting the regulations that pertained to campaign reporting and not adopting the regulation the staff initially proposed that would have narrowed the amendments to the PRA.

Ms. Menchaca explained that by adopting the first regulation, the CalPERS Board members would be treated as elected state officers only with respect to campaign reporting.

Marte Castaños, CalPERS Staff Counsel, urged the Commission to adopt all three regulations. He believed that these regulations would solve some of the unintended consequences that occur because of the amendments to elective state office and elective office, and that it would do so in a timely manner and save CalPERS from having to go to the Legislature. Mr. Castaños noted that adoption of the regulations would be consistent with the legislative intent and referred the Commission to technical amendments which did not change the substance of the bill, and the Legislative Counsel's Digest which delineated that the amendments would be for only specified purposes of the PRA. He added that he believed that the Commission had the authority to adopt the provisions.

Chairman Getman noted that the plain language of Sections 82023 and 82024 make CalPers elected state officers holding an elective state office and suggested that this issue should be dealt with legislatively and not by the Commission. Mr. Castaños responded that the Commission is not precluded from resolving clear ambiguities and unintended consequences of the legislative provision.

Commissioner Scott expressed her concern that the largest investment body in the world should not have less reporting obligations because of the importance of their work. Mr. Castaños referred her to the legislative intent and noted that CalPERS has many internal rules on gifts and campaign disclosure.

Ms. Menchaca noted that the three statutes were amended late in the legislative session and that the issue up to that point was one of jurisdiction with respect to section 20096.5, which is purely a campaign reporting section. She added that staff met with the author and it was clear that the author intended that the CalPERS Board be treated like all other elected state officers. Ms. Menchaca also noted that the author rejected the language that CalPERS was proposing.

Commissioner Deaver suggested that the issue go back to the Legislature.

Chairman Getman explained that since there must be some campaign reporting and staff must develop forms, that staff recommends approval of the two regulations that deal solely with campaign reporting. She did not want to go back to the Legislature with substantive suggestions, but instead, to request clarification from the Legislature about its intent.

Commissioner Deaver suggested that the Commission inform the Legislature that the Commission

was in error with its original analysis, apologize for the error, and ask that it consider changing the legislation.

Commissioner Makel stated that she could not get past the plain meaning, even though the plain meaning issue was the Commission's fault.

Chairman Getman made a motion that option 5 be adopted, meaning that regulations 18451 and 18452 be adopted and the Commission will approach the Legislature with an identification of the problems and ask the Legislature for its help in clarifying what it intended. Commissioner Deaver seconded the motion. There being no opposition, the motion passed.

Item #17: Press Policies.

Media Relations Director Sigrid Bathen presented policies and guidelines for responding to inquiries from the news media. Ms. Bathen explained that the policy includes getting information to the media promptly, clearly, and accurately. She noted that the volume of press inquiries is heavy, and the issues are complex. Ms. Bathen discussed her history with the media and how it will affect her efforts at the FPPC.

Commissioners Deaver and Scott agreed that it is a good press policy and thanked Ms. Bathen for her work.

Item #18: Adoption of Policy Goals for the Commission in 1999-2000.

Chairman Getman explained that the goals presented in a Memorandum to Commissioners Deaver and Scott, were the result of a meeting with FPPC Executive Staff, Commissioner Makel, and Chairman Getman in August 1999. The emphasis of the goals was on simplification, education, and outreach.

Commissioner Scott stated that she had put together a memo outlining her recommended goals for enforcement. She added that, while she strongly supported education and simplification, she did not see them as a substitute for enforcement. She noted that there are limited resources and that priorities must be established. She urged that the enforcement plan discuss those priorities. She urged more coordination between the Legal and Enforcement Divisions and a better understanding of what can be discussed under the Bagley-Keene Act or due process.

Commissioner Scott also urged the Commission to do more reports and studies. She noted that usable data is available within the agency that could be made available to other people.

Lobbying is another area that Commissioner Scott would like to see expanded by the Commission. She did not advocate misusing resources, but noted that she would like to take a proactive stance on developing policy.

Commissioner Deaver agreed that education and enforcement were important for compliance. He

noted that reports from the Commission have decreased because of a lack of resources. Executive Director Robert Tribe responded that the proposed budget included a request for additional funds for the year 99/00 to set up a public education unit which would do reports. He noted that the Reports Unit was lost in 1991 due to budget cuts.

Commissioner Scott suggested that a unit might not be necessary to accomplish the goal. Chairman Getman clarified that existing staff simply did not have the resources and time to do analytical reports. Chairman Getman noted that, while there was information available within the agency, it was not computerized and would involve a tremendous amount of work to put together, and would require additional personnel or cutting back significantly in other areas.

Commissioner Deaver made a motion that the memo in item 18 be adopted as the Commission's Policy and Planning Objectives for the 99/00 year.

Commissioner Scott requested that her comments and her memo be included as a concurring or dissenting comment.

Since the Commissioners had not had the opportunity to look at Commissioner Scott's document, Chairman Getman suggested that the item be held over until the November meeting and that the document be made available to the public with the agenda packet, and through the Fax-on-demand and the web site.

Commissioner Scott requested that her document be put on the web site immediately, rather than waiting for the meeting packet.

Chairman Getman responded that it could be put on the web, but that it could not be mailed until ten days before the next meeting with the rest of the agenda packet, because of the cost of mailing.

Chairman Getman agreed to make the memo available on the web to include it as part of the packet for the next meeting, and the Commission would vote on the policy and planning objectives at the next meeting.

Commissioner Deaver withdrew his motion.

Item #19: Discussion of Management Structure.

Chairman Getman discussed with the Commissioners the management structure of the Commission's executive and management staff. She noted that the Commission is currently undergoing a search for a General Counsel, and that in the context of that search, there have been discussions about what the management structure of the agency should be and how the duty statement of the General Counsel should be read.

Item #20: Consideration of Legislative Proposal to Redefine Major Donors to Exclude Contributors to Only One Candidate or Committee.

Government Relations Director Scott Tocher presented the Commission with a draft proposal to redefine the definition of major donors such that a major donor would include only those individuals or groups who contribute ten thousand dollars (\$10,000) or more to more than one candidate or committee. He noted that it was not a proposal to eliminate major donor reporting, and the proposal addressed only twenty percent of the November, 1998 major donor filings.

Chairman Getman questioned whether the reporting of business interests could be made more useful. Legal Division Counsel Hyla Wagner explained that the Form 461 contains explanatory material, and that the Commission could not require more information if the filer provided correct information in the first place. She noted that the information included on the form will be available on the electronic form also.

Commissioner Deaver favored getting details, but noted that it would be difficult to specify the nature of every business.

Commissioner Scott questioned whether staff had looked at the forms to determine how much was disclosed. Mr. Tocher explained that every form was reviewed for the contents of its description of the nature and interests of the filer. Commissioner Scott questioned whether the information being provided by the filer could be more specific. Commissioner Deaver pointed out that reporters have other sources from which to determine the filer's type of business.

Ms. Wagner explained that the major donor reports are currently filed by those donors giving over ten thousand dollars (\$10,000). She noted that it would be odd to have donors who gave two hundred thousand dollars (\$200,000) left off of the major donor list because they gave to a single campaign or ballot measure.

Commissioner Makel agreed and added that she did not believe that the Commission should get behind sponsoring legislation that is part of the substantive campaign finance reform debate. The Commission's role, she asserted, should be to stand ready to implement and administer whatever comes its way. She did not think that changing the threshold for major donor reporting is an issue that the Commission should be involved in.

Chairman Getman agreed with Commissioner Makel's concerns regarding the Commission's role, and explained that the forms simplification project drew the Commission into this issue. She noted that the vast majority of the major donor reports that were the subject of requests for civil actions were filed by persons who had given a single contribution and that most of them were filed after the election. This caused the Commission to take a closer look at the form to determine if requiring major donor reports from these filers was serving a purpose. Chairman Getman added that the legislative package proposed limiting items such as travel logs, which could be considered a substantive change in the law and that the Commission should be consistent. Commissioner Makel noted that the proposed travel log change is not as substantive as the proposed major donor change.

Commissioner Deaver motioned that option 3 be adopted, postponing Commission action on the proposal at this time awaiting the implementation of the FPPC's streamlined enforcement program for major donor filers, and electronic filing. Chairman Getman seconded the motion. There being no objection, the motion passed.

Chairman Getman adjourned the meeting for a break at 4:00 p.m.
The Commission meeting reconvened at 4:10 p.m.

Item #21: Legislative Report.

Government Relations Director Scott Tocher reported that AB 1274, which provides more time for the FPPC to evaluate a complaint before determining whether or not to proceed with a civil action, had been signed by the Governor and is Chapter 477.

Mr. Tocher also noted that AB 1692 was chaptered. It provides that the FPPC has 100 days to determine whether or not to accept or reject an ALJ decision.

Chairman Getman noted that SB 50, changing the deadlines for reports to be filed in the upcoming election, is being implemented by the Technical Assistance Division. The FPPC worked jointly with the Secretary of State's Office to produce a document explaining the new deadlines to files. She noted that Technical Assistance Division Chief Carla Wardlow will be updating the Legislature on SB 50 and electronic filing. Chairman Getman added that some leaders of the Legislature have been in contact with the Commission on the Forms Project and that they have been very interested in helping with the Project.

Item #22: Executive Director's Report.

Executive Director Robert Tribe reported that staff has been interviewing candidates for the Legal Division attorneys. He added that Enforcement Division attorney interviews will begin soon.

Mr. Tribe thanked Media Director Sigrid Bathen for her work in putting together the "25 Years of Political Reform" luncheon scheduled for November 5, 1999.

Mr. Tribe announced his retirement as of March 1, 2000, and his agreement to continue on a part-time basis in the Administrative Division of the Commission.

The budget discussion was carried over to either the November or December meeting. Mr. Tribe stated that the budget was already approved, but is a fluid document and can be changed. He explained that it does not become effective until July 1, 2000.

The meeting adjourned at 4:35 p.m.

Dated: October 18, 1999

Prepared by:

Sandra A. Johnson
Executive Secretary

Approved by:

Chairman Getman